

JAN 22 2010

S.B. NO. 2373

A BILL FOR AN ACT

RELATING TO PRIVATE TRANSFER FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 501, Hawaii Revised Statutes, is
2 amended by adding a new section to the part entitled
3 "Miscellaneous Provisions" to be appropriately designated and to
4 read as follows:

5 "§501- Prohibition of transfer fees. (a) A deed
6 restriction or other covenant running with the land applicable
7 to the transfer of real property that requires a transferee of
8 real property or the transferee's heirs, successors, or assigns,
9 to pay a fee in connection with a future transfer of the
10 property to a declarant or other person imposing the deed
11 restriction or covenant on the property or a third party
12 designated by a transferor of the property is prohibited. A
13 deed restriction or other covenant running with the land that
14 violates this section or a lien purporting to encumber the land
15 to secure a right under a deed restriction or other covenant
16 running with the land that violates this section is void and
17 unenforceable.



1 (b) This section shall not apply to the following fees or
2 charges required by a deed restriction or other covenant running
3 with the land in connection with the transfer of real property:

4 (1) Any interest, charge, fee, or other amount payable by
5 a borrower to a lender pursuant to a loan secured by
6 real property, including any fee payable to the lender
7 for consenting to an assumption of the loan or
8 transfer of the real property, for providing an
9 estoppel letter or certificate, or for any shared
10 appreciation interest or profit participation or other
11 consideration payable to the lender in connection with
12 the loan;

13 (2) Any fee, charge, assessment or fine payable to a real
14 property homeowners', condominium, cooperative, or
15 property owners' association pursuant to a
16 declaration, covenant, or law applicable to an
17 association, including a fee or charge to change the
18 association's records as to the owner of the real
19 property or to provide an estoppel letter or
20 certificate;

21 (3) Any fee or charge payable to a landlord under a lease
22 of real property, including a fee or charge payable to



1 the landlord for consenting to an assignment of the
2 lease, for providing an estoppel letter or
3 certificate, or to change the landlord's records as to
4 the owner of the lessee's interest in the lease;

5 (4) Any consideration payable to the holder of an option
6 to purchase an interest in real property or the holder
7 of a right of first refusal or first offer to purchase
8 an interest in real property for waiving, releasing,
9 or not exercising the option or right upon transfer of
10 the real property to another person;

11 (5) Any fee, charge, shared appreciation interest, profit
12 participation, or other consideration, payable by:

13 (A) A person engaged in the business of the
14 development of real property for resale to others
15 and not for the person's own use or the use of
16 the person's parent, affiliates, subsidiaries, or
17 relatives; or

18 (B) A person who acquires the real property for the
19 purpose of engaging in the business of the
20 development of real property for resale to others
21 or for the purpose of reselling the real property
22 to a person engaged in the business of the



1 development of real property for resale to
2 others; or

3 (6) Any fee or charge payable to a government entity."

4 SECTION 2. Chapter 502, Hawaii Revised Statutes, is
5 amended by adding a new section to the part entitled "Other
6 Provisions" to be appropriately designated and to read as
7 follows:

8 "§502- Prohibition of transfer fees. (a) A deed
9 restriction or other covenant running with the land applicable
10 to the transfer of real property that requires a transferee of
11 real property or the transferee's heirs, successors, or assigns,
12 to pay a fee in connection with a future transfer of the
13 property to a declarant or other person imposing the deed
14 restriction or covenant on the property or a third party
15 designated by a transferor of the property is prohibited. A
16 deed restriction or other covenant running with the land that
17 violates this section or a lien purporting to encumber the land
18 to secure a right under a deed restriction or other covenant
19 running with the land that violates this section is void and
20 unenforceable.



1 (b) This section shall not apply to the following fees or
2 charges required by a deed restriction or other covenant running
3 with the land in connection with the transfer of real property:

4 (1) Any interest, charge, fee, or other amount payable by
5 a borrower to a lender pursuant to a loan secured by
6 real property, including any fee payable to the lender
7 for consenting to an assumption of the loan or
8 transfer of the real property, for providing an
9 estoppel letter or certificate, or for any shared
10 appreciation interest or profit participation or other
11 consideration payable to the lender in connection with
12 the loan;

13 (2) Any fee, charge, assessment or fine payable to a real
14 property homeowners', condominium, cooperative, or
15 property owners' association pursuant to a
16 declaration, covenant, or law applicable to an
17 association, including a fee or charge to change the
18 association's records as to the owner of the real
19 property or to provide an estoppel letter or
20 certificate;

21 (3) Any fee or charge payable to a landlord under a lease
22 of real property, including a fee or charge payable to



1 the landlord for consenting to an assignment of the
2 lease, for providing an estoppel letter or
3 certificate, or to change the landlord's records as to
4 the owner of the lessee's interest in the lease;

5 (4) Any consideration payable to the holder of an option
6 to purchase an interest in real property or the holder
7 of a right of first refusal or first offer to purchase
8 an interest in real property for waiving, releasing,
9 or not exercising the option or right upon transfer of
10 the real property to another person;

11 (5) Any fee, charge, shared appreciation interest, profit
12 participation, or other consideration, payable by:

13 (A) A person engaged in the business of the
14 development of real property for resale to others
15 and not for the person's own use or the use of
16 the person's parent, affiliates, subsidiaries, or
17 relatives; or

18 (B) A person who acquires the real property for the
19 purpose of engaging in the business of the
20 development of real property for resale to others
21 or for the purpose of reselling the real property
22 to a person engaged in the business of the



1 development of real property for resale to
 2 others; or
 3 (6) Any fee or charge payable to a government entity."

4 SECTION 3. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: Resaly H Bah

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Report Title:

Real Property; Transfer Fees

Description:

Prohibits the imposition of fees for a future transfer of real property. Specifies exceptions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

